

No. 6 of 1988.

*Adultery and Enticement Act 1988.*

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



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# INDEPENDENT STATE OF PAPUA NEW GUINEA.



## AN ACT

entitled

### *Adultery and Enticement Act 1988,*

Being an Act to regulate certain aspects of disputes relating to adultery and enticement, as a matter of national interest.

## PART I. – INTRODUCTION.

### 1. INTERPRETATION.

In this Act, unless the contrary intention appears—

“compensation” means—

- (a) in relation to an action arising out of an act of adultery—compensation for the act of adultery; and
- (b) in relation to an action arising out of enticement—compensation for the enticement;

“Court” means a Local Court or District Court;

“spouse” includes a party to a relationship between a man and a woman which can reasonably be considered as a subsisting relationship having the status of a marriage.

### 2. ACT OF ADULTERY.

An act of adultery is committed where a spouse engages in voluntary sexual intercourse with a person other than his spouse.

### 3. ENTICEMENT.

A person commits enticement when he persuades or attempts to persuade the spouse of another person to commit an act of adultery whether or not the contemplated act of adultery is committed.

**PART II. – ACTIONS FOR ADULTERY AND FOR ENTICEMENT.****4. ACTION FOR ADULTERY.**

(1) A person whose spouse has committed an act of adultery may bring an action under this Act against–

- (a) the spouse; or
- (b) the person with whom the spouse has committed the act of adultery; or
- (c) the spouse and the person referred to in Paragraph (b).

(2) For the purposes of an action under Subsection (1), all acts of adultery committed between the same persons before the commencement of the action shall be regarded as one act of adultery.

**5. ACTION FOR ENTICEMENT.**

A person whose spouse has been enticed may bring an action under this Act against the person who has committed the enticement.

**6. RELATIVE MAY BRING ACTION.**

The Court shall permit a relative of a person entitled to bring an action under Section 4 or 5 to bring an action on behalf of that person where the Court is satisfied–

- (a) that the relative has the permission of the person to do so; or
- (b) that the person is unable or incapable of–
  - (i) bringing an action; and
  - (ii) giving permission to a relative to do so.

**7. TIME LIMITATION FOR BRINGING ACTION.**

(1) An action under this Act shall be brought not later than six months after the day when the act of adultery or the enticement, complained of, was committed.

(2) Where by virtue of Section 4(2) acts of adultery are regarded as one act of adultery, the period of six months referred to in Subsection (1) shall commence to run on the day next following the day when the last of those acts of adultery was committed.

(3) Where in the opinion of the Court, a person has reasonable cause for not bringing an action within the period specified under Subsection (1), the Court may permit the person to bring the action after the expiry of that period but in any event not later than three months after the expiry of that period.

**8. JOINING OF ACTIONS.**

(1) Where in respect of an act of adultery, two actions are brought by the same person, one against the spouse and the other against the person with whom the spouse committed the act of adultery, the Court may, at its discretion, hear the two actions together.

(2) Where—

- (a) enticement is committed; and
- (b) the enticed spouse commits an act of adultery with the person who committed the enticement; and
- (c) separate actions are brought in respect of the enticement and the act of adultery by the same person,

the Court may hear the actions together.

(3) Where, in respect of an act of adultery, an action is brought against only one of the parties to the act of adultery, the party against whom the action has been brought may request the Court to order that the other party to the act of adultery be joined as defendant to the action and the Court may, whether or not that other party is available or cannot be located, order accordingly.

## 9. DEFENCES.

(1) A defendant to an action under this Act, may, without prejudice to any other defences which he may raise, raise any or all of the following defences:—

- (a) that the person entitled to bring the action has, prior to the commission of the act of adultery or enticement, consented to the act of adultery or enticement, as the case may be;
- (b) that the person entitled to bring the action has, after learning of the act of adultery or enticement, forgiven the defendant;
- (c) that the defendant believed on reasonable grounds that the spouse with whom the act of adultery or enticement was committed, was not married.

(2) Where, on evidence, a defence is established under Subsection (1), the Court shall dismiss the action.

### **PART III. – PENALTIES, COMPENSATION AND ENFORCEMENT OF ORDERS.**

#### **10. MEDIATION.**

(1) Before hearing an action under this Act, a Court shall endeavour to have the action settled by mediation.

(2) Sections 31, 32 and 33 of the *Local Courts Act* 1963 apply to a mediation under Subsection (1).

#### **11. COMPENSATION.**

Where in an action under this Act–

- (a) mediation in accordance with Section 10 has failed; and
- (b) the Court is satisfied, on the hearing of the action, that the act of adultery or enticement, complained of, was committed; and
- (c) a defence under Section 9 has not been established,

the Court may make an order for compensation to the complainant against all or any of the defendants.

#### **12. AMOUNT FOR COMPENSATION FOR AN ACT OF ADULTERY.**

(1) An order for compensation in an action brought in respect of an act of adultery shall be for an amount not exceeding K1,000.00.

(2) Where separate actions are brought by the same person or on behalf of the same person in respect of the same act of adultery, the total amount of compensation shall not exceed K1,000.00.

#### **13. AMOUNT OF COMPENSATION FOR ENTICEMENT.**

An order for compensation in an action for enticement shall be for an amount not exceeding K500.00 regardless of whether the order is made in respect of more than one defendant.

#### **14. AMOUNT OF COMPENSATION FOR AN ACT OF ADULTERY AND ENTICEMENT.**

Where an enticed spouse commits an act of adultery with the person who has committed the enticement and separate actions are brought by the same person or on behalf of the same person in respect of the enticement and the act of adultery, the total amount of compensation to be made in respect of all those actions shall not exceed K1,000.00 regardless of whether or not the actions are heard together.

**15. APPORTIONMENT OF COMPENSATION.**

Where, in an action or actions heard together, an order for compensation is made in respect of more than one defendant, the Court shall specify in the order the amount payable by each defendant.

**16. ASSESSMENT OF COMPENSATION.**

In determining the amount of compensation that may be awarded against a defendant, the Court shall take into account—

- (a) the defendant's earning capacity; and
- (b) any financial hardship likely to be suffered from the making of the order; and
- (c) any other matters the Court considers to be relevant including whether payment of compensation according to custom has been made in respect of the act of adultery or the act of enticement.

**17. PAYMENT OF COMPENSATION.**

(1) Subject to Subsection (2), compensation may be ordered to be made—

- (a) in cash; or
- (b) in goods specified in the order; or
- (c) partly in cash and partly in goods so specified.

(2) Alcoholic liquor of any kind shall not be regarded as goods for the purposes of Subsection (1).

(3) Compensation may be ordered to be made—

- (a) at one time; or
- (b) subject to such conditions (if any) as the Court thinks proper, by instalments determined by the Court.

**18. NON-COMPLIANCE WITH ORDER FOR COMPENSATION.**

A person, who fails to comply with an order for compensation made against him under Section 11, is guilty of an offence.

Penalty: A term of imprisonment not exceeding six months.

**19. STANDARD OF PROOF.**

<sup>1</sup>The standard of proof to be applied in proceedings under this Act shall be that applied in civil proceedings, namely, proof on the balance of probabilities.

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<sup>1</sup> Section 19 repealed and replaced by the *Adultery and Enticement (Amendment) Act 1989* (No. 13 of 1989).

**20. ENFORCEMENT OF ORDERS.**

An order of a Court shall be enforced under the *District Courts Act 1963* or the *Local Courts Act 1963*, as the case may be.

**PART IV. – MISCELLANEOUS.**

**21. ABOLITION OF CERTAIN COMMON LAW RIGHTS.**

(1) Subject to Subsection (2), actions or claims for compensation or orders for compensation on the ground of—

- (a) adultery; or
- (b) enticement,

shall not be brought or made, as the case may be, except in accordance with this Act.

(2) Subsection (1) does not affect any action or claim for compensation that has commenced, or the enforcement of an order for compensation that has been made, before the commencement of this Act.

**22. REPEAL OF CERTAIN PROVISIONS OF THE *NATIVE REGULATION* (CHAPTER 316) AND THE *NATIVE ADMINISTRATION REGULATION* (CHAPTER 315).**

Section 2 of the *Native Regulation* (Chapter 316) and Section 2 of the *Native Administration Regulation* (Chapter 315) are repealed.

Office of Legislative Counsel, PNG